



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,727	06/25/2001	Bernhard H. Weigl	MICRO1180	1517
500	7590	09/06/2006	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 6300 SEATTLE, WA 98104-7092			ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

4

<b>Office Action Summary</b>	Application No. 09/888,727	Applicant(s) WEIGL ET AL.	
	Examiner Lyle A. Alexander	Art Unit 1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 33-34 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Vigh or Weigl et al.

See the appropriate paragraph of the 7/28/05 Office action.

***Response to Arguments***

Applicant's arguments filed 6/26/06 have been fully considered but they are not persuasive.

Applicants' remarks and amendments concerning the 35 USC 112 second paragraph issues were convincing and these rejections have been vacated.

Applicants' state Vigh and Weigl do not teach the claimed steps of (1) selecting a fluid with a known viscosity, (2) sheathing a first fluid within the center of the second fluid and (3) flowing the sheathed second fluid through a channel. Point (3) will not be further considered because it is not commensurate in scope with the pending claims.

Both Vigh and Weigl select fluids with known viscosities clearly meeting the first requirement. Vigh teaches in claims 22+ sheathing a first fluid within a second fluid which clearly meets the second requirement. Weigl teaches in column 4 lines 14+ sheath flow which clearly meets requirement (3).

Applicants' also state the cited prior art fails to teach (1) the second fluid completely surrounding the first fluid, (2) the flow rate is constant across the center region, (3) the flow rate of the two fluids are substantially equal and (4) the second fluid

is selected for its desired properties of the interface between the first and second fluids. Applicants' state the Office has put forth Vigh and Weigl teach (2) and (3) and have the characteristics of (1) and (3). Applicants' state the Office has failed to teach a method comprising step (1) and the characteristics of (2) and (4).

The definition of sheath flow is the encompassing of a first fluid by a second fluid. The Office maintains the art of record by teach sheath flow meets (1). The Office maintains Vigh et al. teach in column 8 lines 55+ the amount of sheath fluid matches the amount of sample. The Office has read this teaching as a constant, equal amount of sheath fluid supplied to a constant, equal amount of sample and meets the (2) requirements. Finally, (4) it is not clear what the claimed "desired flow rate at the interface" is. The claim language is sufficiently broad, the system of Vigh et al. must have the characteristics desired by Vigh et al. and has been properly read on the instant claims.

Weigl teaches sheathing of the two fluids in column 44 which meets (1). Weigl teaches in column 7 the two fluid streams may have equal flow rates which meets the (2) requirement. Finally, (4) it is not clear what the claimed "desired flow rate at the interface" is. The claim language is sufficiently broad, the system of Weigl. must have the characteristics desired by Weigl and has been properly read on the instant claims.

### ***Conclusion***

This is a RCE of applicant's earlier Application No. 09/888,727. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had

Art Unit: 1743

been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

\*\*\*